

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAMUEL HERRERA,

Plaintiff,

vs.

Cause No.

BOARD OF COUNTY COMMISSIONERS
FOR RIO ARRIBA COUNTY, BARNEY
TRUJILLO, DANNY GARCIA, ALFREDO
MONTOYA and LARRY DEYAPP in
their individual and official capacity,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446(a) and (b), Defendants Board of County Commissioners of Rio Arriba County, Barney Trujillo, Daniel Garcia, Alfredo Montoya and Larry DeYapp, by and through their undersigned counsel, Yenson, Allen & Wosick, P.C. (Robert W. Becker, appearing), give Notice of Removal to this Court of the civil action filed in the First District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-2015-00070, by Plaintiff, Samuel Herrera and as grounds therefore state:

1. On February 27, 2015, Plaintiff filed a Complaint for Damages for Negligence, Personal Injury and Violation of Civil Rights. A copy of the Complaint is attached hereto as Exhibit A.
2. Defendant Board of County Commissioners for Rio Arriba County was served on March 11, 2015. See Summons marked "received March 11, 2015," attached hereto as Exhibit B.
- Defendants Barney Trujillo, Danny Garcia, Alfredo Montoya and Larry DeYapp

acknowledged service of the Complaint on April 3, 2015. See Acknowledgement of Service attached as Exhibit C.

3. This Notice of Removal is timely as it was filed within thirty (30) days of proper service of the Complaint on March 11, 2015 on Defendant Board of County Commissioners of Rio Arriba County and within 30 days of acknowledgment of service of the Complaint on Defendants Barney Trujillo, Danny Garcia, Alfredo Montoya and Larry DeYapp on April 3, 2015.

4. All Defendants, by and through their undersigned counsel, consent to the removal of this action.

5. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Rio Arriba, State of New Mexico.

6. The claims stated against Defendants that are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) are as follows:

a. Count II of Plaintiff's Complaint, alleging violation of civil rights in violation of the Eighth Amendment to the U.S. Constitution. See Exhibit A, Count II, para. 59-64.

7. A Federal question thus appears on the face of Plaintiff's Complaint. The Court also has supplemental jurisdiction of the remaining state law claim pursuant to 28 U.S.C. § 1337, as it forms part of the same case or controversy under Article III of the United States Constitution. See Exhibit A, Count I, para. 44-58.

8. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will file a Notice of Filing of State Court Record and certified copies of the pleadings filed in the First District Court for the State of New Mexico, County of Rio Arriba, Cause No. D-117-CV-2015-00070, within thirty (30) days of filing this Notice of Removal. A Civil Cover Sheet is attached as Exhibit D.

Respectfully submitted,

YENSON, ALLEN & WOSICK, P.C.

/s/ Robert W. Becker

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I HEREBY CERTIFY that on the 3rd day of April, 2015, I filed the foregoing electronically through the CM/ECF System, and mailed a copy of same to:

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